

BERNICE A. BROWN

IBLA 75-520(A)

Decided December 12, 1975

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting Native allotment application AA-7324.

Reversed and remanded.

1. Alaska: Native Allotments

The use and occupancy requirement is satisfied when a qualified Native shows at least 5 years of continued use and occupancy of land from which she earns subsistence and where her use potentially excludes that of all others.

APPEARANCES: James H. Holloway, Esq., Alaska Legal Services Corporation, Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Bernice A. Brown appeals from a decision of the Alaska State Office, Bureau of Land Management, dated April 18, 1975, rejecting her application for Native allotment AA-7324 for the stated reason that she failed to show 5 years of substantially continuous use and occupancy as required by the Alaska Native Allotment Act, as amended, 43 U.S.C. §§ 270-1 to 270-3 (1970), repealed by § 18 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617 (Supp. III, 1973).

On December 8, 1971, appellant filed a Native allotment application claiming seasonal use and occupancy since 1953 for hunting, fishing, and berrypicking on the land at issue. A field examination in September 1972 found no evidence of use and occupancy. On June 17, 1974, appellant received a notice giving her 30 days to show further evidence in support of her claim. In response, she submitted an affidavit of an employee of the Bureau of Indian Affairs which indicated that appellant had used an unspecified area of land. Appellant also submitted a statement signed by 18 persons that she used the claimed land in the "traditional Native subsistence manner." These statements, however, did not establish that the appellant had met the requirements of the law in that they lacked specificity.

After filing her notice of appeal from the decision of the State Office, the appellant submitted the statements of 10 witnesses which support her application. These statements all show that appellant had used the land for berrypicking, trapping, fishing, and wood gathering and that no other persons used the land. Appellant has submitted an adequate explanation for her failure to submit such statements to the State Office prior to its decision, and the witness statements thus merit our consideration.

[1] A Native allotment may issue where a qualified Native shows at least 5 years' continued use and occupancy of land from which she earns subsistence and where her use potentially excludes that of all others. Jack Koutchak, 21 IBLA 71 (1975). It appears that appellant's evidence demonstrates she meets this requirement.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded to the State Office for further appropriate action.

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Frederick Fishman  
Administrative Judge

We concur:

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Joseph W. Goss  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

